UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHAKULA JOHNSON, Plaintiff, v. DIVERSIFIED CONSULTANTS, INC., Defendant.	16-cv-00572-WCO-LTW

DEFENDANT, DIVERSIFIED CONSULTANTS, INC.'S, ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

Defendant, Diversified Consultants, Inc. (DCI), through counsel and pursuant to the Federal Rules of Civil Procedure, submits this Answer and Affirmative Defenses to the Complaint filed by plaintiff, Chakula Johnson (plaintiff), and states:

PRELIMINARY STATEMENT

DCI admits plaintiff purports to bring this action pursuant to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq*., the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, *et seq*., and the Georgia Fair Business Practices Act (GFPBA), O.G.C.A. § 10-1-393, *et seq*., but denies any violations, liability or wrongdoing under the law. Except as specifically admitted, DCI denies the allegations in the unnumbered paragraph.

PARTIES

1. DCI denies the allegations in ¶ 1 for lack of knowledge or information sufficient to form a belief therein.

2. DCI denies the allegations in ¶ 2 as calling for a legal conclusion.

3. DCI denies the allegations in ¶ 3 for lack of knowledge or information sufficient to form a belief therein.

4. DCI admits it has an office in Florida. Except as specifically admitted, DCI denies the allegations in ¶ 4.

5. DCI admits part of its business is the collection of debts. Except as specifically admitted, DCI denies the allegations in ¶ 5 as calling for a legal conclusion.

JURISDICTION AND VENUE

6. Upon information and belief, DCI admits this Court has jurisdiction. Except as specifically admitted, DCI denies the allegations in ¶ 6.

7. Upon information and belief, DCI admits venue is proper. Except as specifically admitted, DCI denies the allegations in ¶ 7.

FACTUAL ALLEGATIONS

8. DCI denies the allegations in ¶ 8.

9. DCI denies the allegations in ¶ 9.

10. DCI denies the allegations in ¶ 10.

11. DCI denies the allegations in ¶ 11.

12. DCI denies the allegations in ¶ 12.

13. DCI admits an account in plaintiff's name was placed with it for collection. Except as specifically admitted, DCI denies the allegations in ¶ 13.

14. DCI denies the allegations in ¶ 14.

15. DCI denies the allegations in ¶ 15.

16. DCI denies the allegations in ¶ 16.

17. DCI denies the allegations in ¶ 17 as calling for a legal conclusion.

18. DCI denies the allegations in ¶ 18.

19. DCI denies the allegations in ¶ 19 for lack of knowledge or information sufficient to form a belief therein.

20. DCI denies the allegations in ¶ 20 for lack of knowledge or information sufficient to form a belief therein.

21. DCI denies the allegations in ¶ 21 for lack of knowledge or information sufficient to form a belief therein.

22. DCI denies the allegations in ¶ 22 as calling for a legal conclusion.

23. DCI denies the allegations in ¶ 23.

24. DCI denies the allegations in ¶ 24.

25. DCI denies the allegations in ¶ 25.

26. DCI denies the allegations in ¶ 26.

27. DCI denies the allegations in ¶ 27.

28. DCI denies the allegations in ¶ 28.

TRIAL BY JURY

29. DCI admits plaintiff has requested a trial by jury. Except as specifically admitted, DCI denies the allegations in ¶ 29.

CAUSES OF ACTION

COUNT I
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. § 1692 *et seq.*

30. DCI reasserts the foregoing as if fully set forth herein.

31. DCI denies the allegations in ¶ 31.

32. DCI admits that part of its business is the collection of debts. Except as specifically admitted, DCI denies the allegations in ¶ 32.

33. DCI denies the allegations in ¶ 33.

34. DCI denies the allegations in ¶ 34.

COUNT II
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227(b)(1)(A)(iii)

35. DCI reasserts the foregoing as if fully set forth herein.

36. DCI denies the allegations in ¶ 36.

37. DCI denies the allegations in ¶ 37.

38. DCI denies the allegations in ¶ 38.

COUNT III
VIOLATIONS OF THE GEORGIA FAIR BUSINESS PRACTICES ACT
O.G.C.A. § 10-1-393(a)

39. DCI reasserts the foregoing as if fully set forth herein.

40. DCI denies the allegations in ¶ 40.

41. DCI denies the allegations in ¶ 41 as calling for a legal conclusion.

42. DCI denies the allegations in ¶ 42.

43. DCI admits the allegations in ¶ 43.

44. DCI denies the allegations in ¶ 44.

45. DCI denies the allegations in ¶ 45.

46. DCI denies the allegations in ¶ 46.

DCI'S AFFIRMATIVE DEFENSES

1. To the extent that any violations are established, any such violations were not intentional and resulted from bona fide error notwithstanding the

maintenance of procedures reasonably adopted and specifically intended to avoid any such error.

2. DCI denies any liability; however, regardless of liability, plaintiff has suffered no actual damages as a result of defendant purported violations.

3. One or more claims asserted by plaintiff are barred by the statute of limitations, laches, estoppel, waiver, and/or unclean hands.

4. Assuming that plaintiff suffered any damages, she has failed to mitigate her damages or take other reasonable steps to avoid or reduce his damages.

5. Any harm suffered by plaintiff was legally and proximately caused by persons or entities other than DCI and were beyond the control or supervision of DCI or for whom DCI was and is not responsible or liable.

6. Plaintiff has failed to state a claim against DCI upon which relief may be granted.

7. One or more of the telephone calls made to plaintiff were not made to a wireless, i.e., cellular, telephone

8. Plaintiff consented and authorized calls to the phone number in question.

9. The phone calls made to plaintiff are exempt from TCPA liability under 47 U.S.C. § 227(b)(1)(B), 47 U.S.C.§ 227(b)(2)(b) and 47 C.F.R. § 64.1200(a).

10. The equipment used to make the telephone calls at issue is not covered by or subject to the TCPA.

11. To the extent the calls at issue were to plaintiff's cellular telephone, as alleged, she provided consent to receive those calls.

12. To the extent plaintiff was not the subscriber of the cell phone at the time of the calls, she has no standing to assert the claim.

13. To the extent plaintiff was not the intended recipient of the calls, she has no standing to assert the claim.

14. The plaintiff acquiesced in and/or consented to the acts and omissions alleged in the Complaint.

WHEREFORE, Diversified Consultants, Inc., requests the Court dismiss this action with prejudice and grant it any other relief the Court deems appropriate.

Date: April 25, 2016

Respectfully submitted,

/s/ Wendi E. Fassbender
Wendi E. Fassbender, Esq.
GA Bar No. 179133
Sessions, Fishman, Nathan & Israel, L.L.C.
14 Coopers Glen Drive, SW
Mableton, GA 30126-2584
Telephone: (678) 209-7492
Facsimile: (877) 480-5639
E-mail: wfassbender@sessions.legal

Attorneys for Defendant,
Diversified Consultants, Inc.

CERTIFICATE OF SERVICE

I certify that on this 25th day of April , 2016, a copy of the foregoing **Answer and Affirmative Defenses to Plaintiff's Complaint** was filed electronically in the ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system, including Plaintiff's counsel as described below. Parties may access this filing through the Court's system.

Matthew T. Berry
Paul J. Sieg
Berry & Associates
2751 Buford Highway, Suite 600
Atlanta, GA 30324

I additionally certify that the above-referenced document has been prepared in Times New Roman (14 point) font and this satisfies the font size requirements of this Court.

/s/ Wendi E. Fassbender
Wendi E. Fassbender, Esq.
GA Bar No. 179133
Sessions, Fishman, Nathan & Israel, L.L.C.
Attorneys for Defendant,
Diversified Consultants, Inc.